

HOUSE BILL NO. 315

INTRODUCED BY D. GALLIK

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE PAYMENT FOR CARE AND MAINTENANCE OF ANIMALS SEIZED WHEN THE OWNER IS CONVICTED OF CRUELTY TO ANIMALS; ~~EXPANDING EXEMPTIONS TO CRUELTY TO ANIMALS; REQUIRING PSYCHOLOGICAL COUNSELING AS AN ADDITIONAL SENTENCE FOR CRUELTY TO ANIMALS; REQUIRING A PERSON CONVICTED OF CRUELTY TO ANIMALS TO PAY FOR THE DAMAGES TO THE ANIMAL'S OWNER OR THE PERSON OR AGENCY THAT INCURRED EXPENSES AS A RESULT OF~~ CHANGING THE FINE AND IMPRISONMENT PENALTIES FOR THE CRIME; EXPANDING THE LIST OF EXEMPT ACTIVITIES AND PRACTICES; AND AMENDING SECTION 45-8-211, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Definitions. As used in ~~this part~~ 45-8-210, 45-8-211, AND [SECTION 2], "animal" means any living vertebrate except humans.

NEW SECTION. Section 2. Seizure of animals and related property -- payment for care and maintenance. (1) If a law enforcement officer or animal control officer has probable cause to believe that an animal is being subjected to treatment in violation of 45-8-211, the officer may, after obtaining a search warrant, enter the premises where the animal is being held and remove the animal to a suitable place for veterinary examination, treatment, and care. The officer may also place the animal in the custody of an animal care or control agency until a court disposition is held.

(2) The agency obtaining custody may euthanize the animal if it is severely injured, diseased, or suffering.

(3) An owner may petition the court for the animal's immediate return ~~under court-imposed restrictions.~~

~~—— (4) If criminal charges are not filed within 14 business days of the animal's removal, the owner may petition the court for return of the animal. The petition must be filed with the court, with copies served on the agency that seized the animal and on the prosecuting attorney. If the court grants the~~

petition, the agency that seized the animal shall deliver the animal to the owner at no cost to the owner.

(5) If probable cause is found, the officer may take charge of the vehicle or conveyance, including its contents, that was used by the person to transport the animal. The officer shall deposit these items in a safe place for custody. Any necessary expense incurred for taking charge and sustaining the vehicle or conveyance is a lien upon the vehicle or conveyance taken. Upon conviction, this lien must be paid before the vehicle or conveyance may be lawfully recovered or the court may order forfeiture of the vehicle or conveyance to the investigating or prosecuting agency.

(6) Upon conviction, the custodial agency has the option of placing a lien against any property, real or personal, owned by the defendant to ensure reimbursement or restitution of incurred care and maintenance expenses of an animal seized.

(7) In a motion or petition for the animal's return before trial, the burden is on the owner to prove by a preponderance of the evidence that the animal will not suffer future neglect or abuse and is not in need of being restored to health.

Section 3. Section 45-8-211, MCA, is amended to read:

"45-8-211. Cruelty to animals -- exception. (1) A person commits the offense of cruelty to animals if without justification the person knowingly or negligently subjects an animal to mistreatment or neglect by:

(a) overworking, beating, tormenting, injuring, torturing, mutilating, maiming, disfiguring, poisoning, or killing any the animal;

(b) causing or procuring an animal to be overworked, beaten, tormented, injured, tortured, mutilated, maimed, disfigured, poisoned, or killed;

(b)(c) carrying or confining any animal in a cruel manner;

(c)(d) failing to provide an animal in the person's custody with:

(i) proper food, drink, or shelter, rest, sanitation, ventilation, or space; or

(ii) in cases of immediate, obvious, serious illness or injury, licensed veterinary or other appropriate medical care;

(d)(e) abandoning any helpless animal or abandoning any animal on any highway, railroad, or in any other place where it may suffer injury, hunger, or exposure or become a public charge; or

(e)(f) promoting, sponsoring, conducting, or participating in an animal race of more than 2 miles;

1 ~~except a sanctioned endurance race.~~

2 ~~—— (2) (a) A person convicted of the offense of negligent cruelty to animals shall be fined not to~~
3 ~~exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person~~
4 ~~convicted of a second or subsequent offense of negligent cruelty to animals shall be fined or be imprisoned~~
5 ~~as provided in subsection (2)(b) not to exceed \$1,000 or be imprisoned in the state prison for a term not~~
6 ~~to exceed 2 years, or both.~~

7 ~~—— (b) A person convicted of the offense of knowing cruelty to animals shall be fined \$1,000 or be~~
8 ~~imprisoned in the county jail for a term of 1 year, or both.~~

9 ~~—— (b)(c) If the convicted person is the owner, the person may be required to forfeit to the county~~
10 ~~in which the person is convicted any animal affected. This provision does not affect the interest of any~~
11 ~~secured party or other person who has not participated in the offense. The court may require~~
12 ~~reimbursement for costs associated with the investigation or the seizure of the animal.~~

13 ~~—— (3) In addition to the sentence provided in subsection (2), the court may:~~

14 ~~—— (a) shall order the defendant to undergo anger management treatment or psychological counseling,~~
15 ~~and this condition may not be suspended. The court may:~~

16 ~~—— (i) order psychological counseling prior to sentencing if an evaluation will assist the court in~~
17 ~~determining the appropriate sentence. The person receiving the psychological counseling shall pay all~~
18 ~~expenses associated with that counseling.~~

19 ~~—— (ii) upon successful anger management or other appropriate counseling or treatment designed to~~
20 ~~evaluate and treat behavior and conduct disorders, suspend any fine except for a minimum \$500 fine.~~

21 ~~—— (a)(b) shall require the defendant to pay all reasonable costs incurred in providing necessary~~
22 ~~veterinary attention and treatment for any animal affected; and~~

23 ~~—— (b)(c) may prohibit or limit the defendant's ownership, possession, or custody of animals, as the~~
24 ~~court believes appropriate during the term of the sentence.~~

25 ~~—— (d) shall, if a person is convicted of cruelty to an animal that is the property of another, require~~
26 ~~the defendant to pay the owner for damages; and~~

27 ~~—— (e) shall require the defendant to pay reimbursement to a person, including any local humane~~
28 ~~society or county or municipal pound, or a law enforcement agency or law enforcement officer for any~~
29 ~~financial loss suffered as a result of the crime. This requirement applies regardless of any other sentence~~
30 ~~imposed.~~

~~(4) The following practices are exempt from this part unless gross negligence is shown, excessive pain is inflicted, or intentional pain is inflicted. Nothing in this section prohibits:~~

~~(a) a person from humanely destroying an animal for just cause; or~~

~~(b) the use of commonly accepted agricultural and livestock practices on livestock;~~

~~(c) lawful fishing, hunting, and trapping activities;~~

~~(d) lawful wildlife management practices; and~~

~~(e) lawful scientific or agricultural research or teaching that involves the use of animals."~~

SECTION 3. SECTION 45-8-211, MCA, IS AMENDED TO READ:

"45-8-211. Cruelty to animals -- ~~exception~~ exceptions. (1) A person commits the offense of cruelty to animals if without justification the person knowingly or negligently subjects an animal to mistreatment or neglect by:

(a) ~~overworking~~, beating, tormenting, injuring, or killing ~~any~~ the animal;

(b) carrying or confining ~~any~~ the animal in a cruel manner;

(c) failing to provide an animal in the person's custody with:

(i) proper food, drink, or shelter; or

(ii) in cases of immediate, obvious, serious illness or injury, licensed veterinary or other appropriate medical care;

(d) abandoning any helpless animal or abandoning any animal on any highway, railroad, or in any other place where it may suffer injury, hunger, or exposure or become a public charge; or

(e) promoting, sponsoring, conducting, or participating in an animal race of more than 2 miles, except a sanctioned endurance race.

(2) (a) A person convicted of the offense of cruelty to animals shall be fined not to exceed ~~\$500~~ or be imprisoned in the county jail for a term not to exceed ~~6 months~~, or both. ~~A person convicted of a second or subsequent offense of cruelty to animals shall be fined not to exceed \$1,000 or be imprisoned~~ incarcerated in the ~~state prison~~ county jail for a term not to exceed ~~2 years~~ 1 year, or both.

(b) If the convicted person is the owner, the person may be required to forfeit any animal affected to the county in which the person is convicted ~~any animal affected~~. This provision does not affect the interest of any secured party or other person who has not participated in the offense.

(3) In addition to the sentence provided in subsection (2), the court ~~may~~:

(a) ~~shall~~ MAY require the defendant to pay ~~all reasonable costs incurred in providing necessary veterinary attention and treatment for any animal affected~~ reimbursement to a person, including a local humane society, a person providing veterinary services, a county or municipal pound or animal shelter, or a law enforcement agency or officer, for any financial loss or investigative costs suffered as a result of the crime; and

(b) may prohibit or limit the defendant's ownership, possession, or custody of animals, as the court believes appropriate during the term of the sentence.

(4) A monetary award of the court under subsection (3) constitutes a judgment enforceable under Title 25 by the party in whose favor the award is entered.

~~(4)(5) Nothing in this section prohibits~~ The following are exempt from this section unless gross negligence is shown:

(a) a person ~~from~~ humanely destroying an animal for just cause; ~~or~~

(b) the use of commonly accepted agricultural and livestock practices on livestock;

(c) rodeo activities;

(d) lawful fishing, hunting, and trapping activities;

(e) lawful wildlife management practices;

(f) lawful scientific or agricultural research or teaching that involves the use of animals;

(g) services performed by a licensed veterinarian; or

(h) lawful control of rodents and predators and other lawful animal damage control activities, including but not limited to poisoning, trapping, and shooting."

NEW SECTION. Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 45, chapter 8, part 2, and the provisions of Title 45, ~~chapter 8, part 2,~~ apply to [sections 1 and 2].

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